

**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

**Beverly Heydinger
J. Dennis O'Brien
David C. Boyd
Phyhs A. Reha
Betsy Wergin**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

**In the Matter of Application for a Route Permit
for the CapX 2020 Hampton-Rochester-LaCrosse
High Voltage Transmission Project**

MPUC: E002/TL-09-1448

NO CAPX 2020'S COMPLAINT OF CONFLICT OF INTEREST

REGARDING

BARR ENGINEERING

CAPX 2020 HAMPTON-LaCROSSE ENVIRONMENTAL IMPACT STATEMENT

(a) Complainant:

No CapX 2020

(b) Complainant's Counsel:

Carol A. Overland
Attorney for No CapX 2020
1110 West Avenue
Red Wing, MN 55066

(c) Respondents (sent via email):

Barr Engineering
c/o John Wachtler, V.P.
Environmental Review
4700 West 77th Street
Minneapolis, MN 55435

Energy Facilities Permitting
c/o Bill Grant
Minnesota Dept. of Commerce
85 – 7th Place East, Suite 500
St. Paul, MN 55101

(d) Respondents' Counsel (via email):

Barr counsel unknown.

Karen Hammel, Asst. A.G.
445 Minnesota St., Suite 1400
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(e) Facts Constituting Allegation:

Barr Engineering is the contractor hired by the Minnesota Department of Commerce for the Environmental Impact Statement for the CapX 2020 Hampton-Rochester-La Crosse transmission line¹.

The transmission route is contested in just two locations, at the segment crossing the Cannon River either near the Byllesby Dam or Highway 52 near Cannon Falls, and at the segment crossing the Zumbro River at the Zumbro Dam or at the White Bridge Road.

Barr Engineering worked on prior projects at each of the two contested sites, and at each of the two contested sites, the existence or non-existence of transmission lines and corridors in the area was presented diametrically opposed to easily demonstrable facts. Rather than present the correct information regarding whether a transmission corridor existed or not, Barr Engineering and the FEIS presented incorrect information that benefited prior clients at each of the areas in question. Near the Byllesby Dam, the DEIS and FEIS did not report THREE transmission lines in a corridor extending north from the dam and one line extending south from the dam. At the Zumbro Dam, the DEIS and FEIS reported there was a transmission corridor from west to east, across the dam, where there is none. In both of these cases, the incorrect information in the FEIS supports the interests of both of Barr Engineering's clients at both of these locations to site transmission elsewhere than the area in question.

Whether this misrepresentation was intentional or unintentional, because the non-proliferation policy of the state of Minnesota requires new transmission lines be routed along existing transmission corridors, and recent law requires the Commission explain choice of a route that does not utilize such a corridor, this misrepresentation likely had a consequence. In the case of both the Byllesby Dam and the Zumbro Dam, the two contested locations, Barr's FEIS was wrong regarding transmission infrastructure. The Commission's decisions were likely influenced by these misrepresentations regarding transmission corridors.

In addition, information was presented in the hearings and in Comment periods noting the incorrect statements, but the FEIS was not corrected. Parties representing Barr Engineering's former clients, one a Dakota County Commissioner and one representing the Lake Zumbro Improvement Association, testified at the Public Hearings. A Dakota County Commissioner also testified at the April 12, 2012, Commission meeting against route 1P-003, raising the Byllesby Master Plan, but not Barr Engineering's work in the Master Plan, and not raising the matter of the pre-existing transmission corridor.

¹ See Barr Engineering site: <https://www.barr.com/projects/2362100900>

Despite this information being raised, full corrections have not been made. The ALJ noted in her Recommendation the transmission lines at the Byllesby Dam but the FEIS has not been corrected. The Byllesby Dam and Zumbro Dam information in the EIS regarding absence and existence of a transmission corridor was corrected in part, but not in its entirety.

LAKE BYLLESBY DAM AREA AND TRANSMISSION CORRIDOR

First, regarding the Byllesby Dam, the FEIS omitted any reference to the transmission corridor from Highway 52 to Highway 19, along Harry Road and south to Highway 19. Barr Engineering was a contractor for Dakota County and Goodhue County regarding the Byllesby Park and Dam:

- 2008 Dakota County Lake Byllesby Regional Park Master Plan².
- 2008 contract with Goodhue County regarding Programmable Logic Controller (PLC) and tailwater sensor³.

The Dakota County Master Plan was cited as a reason for not utilizing route 1P-003 on the eastern edge of the park, the eastern edge of which is also where the broad three-line transmission corridor is located:



Source: Affidavit of Jen Langdon, p. 2 (attached to Cannon Falls Motion for Reconsideration)

² Available online at:

<http://www.co.dakota.mn.us/LeisureRecreation/Reports/LakeByllesbyregionalParkMasterPlan.htm>

³ Available online at:

<http://www.co.goodhue.mn.us/countygovernment/commissioners/CountyBoardPackets/2009/June16ClosedSession/Byllesby%20Dam%20update-Closed%20Joint%20Mtg.pdf>

The Commission's Order cites the FEIS which cites the Dakota County Master Plan, discussing routes 1P-001, 1P-002, and 1P-003, states that:

These route alternatives would run along an existing HVTL and Harry Ave. These route alternatives would also parallel a planned Lake Byllesby Regional Park recreational trail and a bridge crossing the Cannon River that are proposed in the parks 2005 Master Plan and planned for construction in 2013.

FEIS, p. 106 (bold added and bold in FEIS).

In addition, Barr Engineering as the FEIS contractor, and the FEIS as the environmental review document, have failed to present the Dakota County Master Plan, or at the least, information from the Master Plan, that demonstrates that routing transmission near the dam is consistent with the park's electrical themes set out in the Master Plan, not contradictory to its plans.

Several issues have not been fully disclosed in the Byllesby Dam part of the FEIS. First, the route proposed is along Harry Avenue, the eastern border of the park, crossing near the dam, and then south following transmission – it does not go through the park, it borders it. The location of the proposed route in relation to the park has not been clearly disclosed.

Second, the park is located on land donated to Dakota and Goodhue County by Northern States Power⁴.

Third, and more ironically, the Byllesby Park Master Plan sets out interpretive themes that focus on electricity! Of the four “interpretive themes” of the park, two focus on electricity and electric generation⁵, based on the history of the park, named after Henry Marison Byllesby, the

⁴ Dakota Co. Master Plan, p. 4.19. In post-hearing Exceptions, Xcel raises information about the “Land and Water Conservation Act of 1965” which is not in the record, and not verified.

⁵ From Dakota Co. Master Plan:

THEME 3: POWERING MINNESOTA - HENRY BYLLESBY AND THE LAKE BYLLESBY DAM. With the increase in the population of Randolph and the subsequent move into the electrical age came the need for power in the homes, businesses, and industries of the Lake Byllesby area. The response to this need was provided by Henry Byllesby, a forerunner in the use of hydroelectric power in America. Byllesby, whose company, Consumers Power Company, was based in Chicago, realized that in directing the power of the rivers of Minnesota, North Dakota, South Dakota, and Wisconsin, he could create the energy needed to sustain the ever-growing populations of these states. One of these rivers was the Cannon River, upon which he had the Ambursen Hydraulic Construction Company construct the Lake Byllesby Dam in 1910. Six years later, he changed the name of his company to Northern States Power Company, recognized today as one of the major providers of power in the midwestern United States.

THEME 4: THE POWER OF ATTRACTION - LAKE BYLLESBY REGIONAL PARK. Though for many years, hydropower was the most economical method of producing power, by the 1960s, larger companies had largely replaced their hydropower plants

first CEO of Northern States Power⁶, and the park’s origin through a donation of the land by Northern States Power.⁷ The park’s interpretive themes extol the wonders of electricity. Barr Engineering and the FEIS did not disclose the electrical interpretive themes of the park.

In the FEIS, Barr Engineering did not disclose in the FEIS corridor descriptions that Harry Road from Hwy. 52 to the Byllesby Dam, and from the Byllesby Dam to Hwy. 19 two out of three times the FEIS failed to disclose that was also a transmission corridor:

Hampton to North Rochester (1P-001)			
	Turn by Turn	Distance (miles)	Comments/ROW Type
1	Follow the applicant’s preferred route until the intersection of US Hwy 52 and Harry Ave.		
2	Turn south following Harry Ave.	1.90	Cnty or Twp Road
3	Continue south cross-country	0.89	Cross-country
4	Turn east following field line	0.41	Field Line
5	Turn southeast cross-country	0.10	Cross-country
6	Turn east cross-country	0.31	Cross-country
7	Turn southeast cross-country	0.13	Cross-country
8	Turn east cross-country/field lines	0.53	Returns to applicant’s preferred route - Cross-country/field lines
Total Length		38.97	

Source: FEIS p. 74, Harry Ave. and Dam to Hwy 19 transmission missing.

Hampton to North Rochester (1P-002)			
	Turn by Turn	Distance (miles)	Comments/ROW Type
1	Follow the applicant’s preferred route until the intersection of US Hwy 52 and Harry Ave.		
2	Turn south following Harry Ave.	1.90	Cnty or Twp Road
3	Continue south following existing transmission line/cross-country to MN Hwy 19	0.37	Transmission Line
4	Turn east following MN Hwy 19	0.98	Returns to preferred route - Major Hwy
Total Length		36.77	

Source: FEIS p. 75, Harry Ave. transmission missing, but does reflect transmission to Hwy. 19.

with coal or nuclear power plants. In replacing many of their hydropower facilities, Northern States Power Company opted to donate much of its property upon which these facilities were situated to the towns or counties encompassing such property. One of these properties was the location of the Lake Byllesby Dam. After the land was donated to Dakota and Goodhue Counties in 1969, Dakota County created Lake Byllesby Regional Park from portions of the land on the north shore of the lake. Lake Byllesby Park attracted residents and visitors alike to picnic, camp, fish, swim, canoe, and simply enjoy the view. Today, both the park and the dam interact to provide a sense of all facets of the area’s history, from natural history, to the history of everyday human interactions, to the engineering history at Lake Byllesby Regional Park.

Byllesby Park Master Plan, p. 4.19 (emphasis added).

⁶ For more information on Byllesby, see *The Energy to Make Things Better: NSP, An Illustrated History of Northern States Power Company*, pps. 10-12, 15, 22-23, 24, 26, 53, 54, 55, 57, 58, 59, 60, 64, 76, 83-84, 89, 95, 113, 147, 150-151, 202-204, 205, 244, 401.

⁷ Id. Theme 4. “In replacing many of their hydropower facilities, Northern States Power Company opted to donate much of its property upon which these facilities were situated to the towns or counties encompassing such property. One of these properties was the location of the Lake Byllesby Dam. After the land was donated to Dakota and Goodhue Counties in 1969...”

Hampton to North Rochester (1P-003)			
	Turn by Turn	Distance (miles)	Comments/ROW Type
1	Follow the applicant's preferred route until the intersection of US Hwy 52 and Harry Ave.		
2	Turn south following Harry Ave.	1.90	Cnty or Twp Road
3	Continue south cross-country to Stanton Trail	1.66	Cross-country
4	Continue south following Stanton Trail	0.50	Cnty or Twp Road
5	Turn east cross-country/field lines	0.92	Cross-country/field lines
6	Continue east on 323rd St.	0.11	Cnty or Twp Road
7	Continue east cross-country/field lines	0.53	Returns to applicant's preferred route - Cross-country/field lines
Total Length		37.23	

Source: FEIS p. 76, Harry Ave. and Dam to Hwy 19 transmission missing.

Whether intentional or unintentional, Barr Engineering's errors and omissions regarding transmission near Byllesby Dam and routes 1P-001, 1P-002 and 1P-003 were in the interests of its prior client, Dakota County, which did not want transmission on routes near Byllesby Park, and Commerce did not sufficiently protect the public interest in assuring information presented was accurate. Barr Engineering, as contractor, should have been supervised by Commerce sufficient to discover and correct the errors and omissions in the FEIS regarding the Byllesby Dam location and routes 1P-001, 1P-002 and 1P-003. Because these were brought to the attention of Commerce during public hearings, Commerce's review was inadequate

LACK OF TRANSMISSION AT ZUMBRO DAM LOCATION

The second area of conflict, where the transmission route is also contested, is near the Zumbro Dam. Barr Engineering was a contractor regarding at least two contracts regarding preparation for dredging in Lake Zumbro⁸ for the Olmsted County, Lake Zumbro Forever Inc., subsidiary of Lake Zumbro Improvement Association, and which helped found the Zumbro Watershed Partnership⁹, and City of Rochester/Rochester Public Utilities. Parties to the above agreements testified against use of the White Bridge Road for CapX transmission, including Olmsted County Board member, Judy Ohly¹⁰, the County Board through a letter, and at Pine Island public hearings a member of the Lake Zumbro Improvement Association. Their interests were that it not be sited on the White Bridge Road. Those interests are furthered when there is a claim in the FEIS of transmission on both sides of the Zumbro Dam where there is none.

⁸ Agreement in 2009 also referencing 2007 contract available online:

http://www.co.olmsted.mn.us/environmentalresources/waterresourcemanagement/Documents/Lake%20Zumbro%20JPB%20Agenda%204_16_09.pdf

⁹ For more information on the history and relationship between these Lake Zumbro entities see:

https://www.facebook.com/note.php?note_id=331534370267343

¹⁰ Judy Ohly is an Olmsted County Commissioner, and has also been Board Member of Zumbro Watershed Partnership

(<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CFMQFjAD&url=http%3A%2F%2Fwww.zumbrowatershed.org%2FResources%2FDocuments%2FZWP%2520Minutes%25204-8-10.doc&ei=fywYUM-NGJKG8QSuyYDoAg&usg=AFQjCNH6YFr2eUThcZJpb9Sp72GN0cdFww>), Joint Powers Board

(http://www.co.olmsted.mn.us/environmentalresources/waterresourcemanagement/Documents/Lake%20Zumbro%20JPB%20Agenda6_9_09.pdf) and chaired the Lake Zumbro Improvement District Task Force

(http://www.co.olmsted.mn.us/environmentalresources/waterresourcemanagement/Documents/Lake%20Zumbro%20JPB%20Minutes%204_8_2010.pdf)

Despite comments on the record that there was no aerial crossing of the dam, Barr Engineering and Commerce did not fully correct the FEIS. The record reflects not just absence of aerial crossing, also absence of transmission!

Barr Engineering's EIS claimed there was transmission at the dam and extending on both sides despite Xcel's statements in its Application that there was no existing aerial transmission at the proposed Zumbro Dam crossing:

The Zumbro Dam Route Option crosses the Zumbro River in a location without existing aerial infrastructure and where impacts to a high quality Maple Basswood forest (Maple Basswood) would occur on the east bank of the river

Hearing Exhibit 1, Application, p. 8-55.

There is visibly no transmission line crossing the river at the Dam. Hearing Exhibit 35, Google Earth files. Applicants also stated that in their application.

Because both the Route Option and the Preferred White Bridge Road Route would require some tree clearing in an area characterized by residential and recreational land use, **and no existing transmission line crosses the river at these locations**, impacts to aesthetics would be similar for both routes.

Hearing Exhibit 1, Application, p. 8-53 (emphasis added); see also Hearing Exhibit 35, Google Earth files.

Xcel noted the errors in the DEIS and requested correction of the EIS in its DEIS Comments:

The DEIS, at page 171, states that routes 3P-Zumbro-N and 3P-Zumbro-S cross the Zumbro River where there is an existing transmission line crossing. This statement should be corrected to note that there are no existing electrical facilities present at any of the crossings. The north Zumbro River crossing (Alternate Route) crosses the Zumbro River at a location where there is no existing infrastructure. The middle Zumbro River crossing (3P-Zumbro-N and 3P-Zumbro-S) crosses the Zumbro River at an existing dam. The south Zumbro River crossing crosses the Zumbro River at the White Bridge Road bridge.

Hearing Exhibit 21, Hillstrom Schedule 18, DEIS Comments April 29, 2011 (same as Hearing Exhibit 113, FEIS, Appendix O, p. O-205-207).

Although the DEIS Comment of Xcel requested that the FEIS be corrected, only corrected one part of the FEIS was changed, the section on recreation:

All route alternatives in this segment would cross the Zumbro River. No existing electrical facilities are present at any of the crossings.

Hearing Exhibit 113, FEIS, Section 8.3, p. 184. This error, and the similar one regarding the Byllesby Dam, was brought to the attention of the Commission at the April 12, 2012 meeting, that the record reflected that there was no transmission, but the FEIS and several related Findings of Fact were incorrect regarding transmission at the Zumbro dam:

In your handouts, on page 2 is a page of the application, page 55, and that states very clearly, there is no infrastructure. There's no aerial crossing there. Page -- the second your handout, which is 8-53 of the application, states there is no transmission line crossing at the dam. There isn't. That's the facts of the case.

And this was raised in the DEIS because the DEIS said that as well. That there was a transmission crossing. And Mr. Hillstrom, in his comments to that, which is annexed in your handout, if you look at that comment you will see that in the last page, it would be page 5 of his comment, asked for that to be corrected, and it was not. There is no transmission infrastructure there. That's what the record says. And the ALJ's findings of fact, they were wrong.

And so that means that that 464 is wrong, also finding of fact 436 and 488, which state that there is transmission infrastructure. That's finding of fact 464, 436 and 488.

Overland at Commission Meeting, 4/12/2012, Tr. p. 45-46.

Other incorrect language referencing existing transmission crossing is found in the FEIS, on the pages which the ALJ cited and relied on in her Recommendation FoF 464.

p. 174: Zumbro Dam Crossing Option – Route alternatives 3P-Zumbro-North and 3P-Zumbro-South would follow the existing crossing of the Zumbro River at the Zumbro Dam and Hydroelectric Generation Facility.

p. 176: Route alternatives 3P-Zumbro-N and 3P-Zumbro-S could minimize impacts to the Zumbro River because an existing HVTL already crosses the Zumbro River at this location.

Xcel agreed at the PUC Meeting that the Findings of Fact and FEIS was in error and that there is no existing transmission line at the Zumbro Dam:

MS. AGRIMONTI: -- respond to the details you have. One, with respect to the crossing of the Zumbro River, I do think Ms. Overland has identified an error, there isn't an existing transmission line there. But Mr. Hillstrom will talk about what existing infrastructure is located at the dam.

Agrimonti, Counsel for Xcel, at PUC Meeting Tr. p.53. Mr. Hillstrom then stated:

Moving to the south now at the -- at the Zumbro Dam. There is no aerial transmission crossing at the dam. However, there is a transmission line that comes

out at the west side of the dam and you can see the tree clearing where that transmission line follows out to the west. That's a low voltage transmission line, it's 34.5 kilovolts, not by any means a high voltage line, and it is basically comparable to a distribution line. I think that was the original transmission line that carried the power from the dam to the city of Rochester when it was built.

Comments of Xcel's Tom Hillstrom at PUC Meeting, Tr. p.60-61. Hillstrom reiterated this lack of transmission and infrastructure later in the meeting:

MR. HILLSTROM: And like we talked about, there is no existing transmission corridor as you head to the east from the dam. And this is the area of the youth camps. And I think to illustrate that a little bit better I can -- I'll turn the route back on and I have a file on here which shows property boundaries and the route width itself.

Hillstrom, PUC Meeting, Tr. p. 141.

The DNR also addressed this lack of infrastructure both in Comments and at the PUC meeting. Because there is no existing infrastructure, as above, the DNR recommends utilizing the White Bride Road crossing because it has fewer impacts.

Specifically, there are three Zumbro River crossings included in the project record: the north crossing, which is a greenfield crossing, a middle crossing at a dam, and the southernmost crossing at the white bridge. As stated above a crossing with no existing infrastructure such as the northernmost crossing is not encouraged. The northern most crossing also has Natural Heritage Information System (NHIS) records of a state-listed turtle in the vicinity of the crossing. There is also a Minnesota County Biological Survey (MCBS) Site of Biodiversity Significance ranked as Moderate near the crossing. The Zumbro River crossing near the dam is located next to an MCBS Site of Biodiversity Significance ranked as High. Rare species in the area include state-listed special concern American ginseng (plant), and state-listed special concern moschatel (plant). The southernmost white bridge crossing would affect an MCBS site of Biodiversity Significance ranked as Moderate and one ranked as Below. To avoid a greenfield crossing, the northernmost route is not recommended. Considering a comparison of rare species, MCBS site presence and ranking, and a general goal of reducing deforestation between the two crossings with existing infrastructure, the DNR recommends utilizing the white bridge crossing in this area rather than the crossing at the dam.

DNR Comment, Public Comments to ALJ, eFiled¹¹.

¹¹ eFiled 7/29/11 by OAH in batch of Public Comments, available online at: [20117-64768-01](#) PUBLIC 09-1448 TL OAH PUBLIC COMMENT-- RECEIVED BEFORE JUNE 30, 2011 07/29/2011

At the April 12, 2012 meeting, the Commission recognized that there were errors in the Findings of Fact based in Barr Engineering's FEIS, and the Commission corrected some of the Findings of Fact to reflect that there is no aerial crossing at the dam, and that there is no transmission crossing the dam or to the east. However Barr Engineering's FEIS has yet to be corrected. The information on page 174 and 176 remains incorrect. The ALJ relied on these incorrect statements in her selection of the Zumbro Dam crossing, and cited the FEIS. The FEIS should be corrected, because the record does not support the information on FEIS pages 174 and 176. Hearing Exhibit 113, FEIS, p. 174 and 176.

Whether intentional or unintentional, Barr Engineering's errors and omissions regarding transmission at the Zumbro Dam route was in the interests of its prior clients, Olmsted County, Lake Zumbro Forever Inc., Lake Zumbro Improvement Association, the Zumbro Watershed Partnership, all of which did not want transmission on routes near the White Bridge Road and that part of Lake Zumbro. The Department of Commerce did not sufficiently protect the public interest to assure information presented was accurate and did not act to correct the misinformation when it knew or should have known the information was wrong. Barr Engineering, as contractor, should have been supervised by Commerce sufficient to discover and correct the errors and omissions in the FEIS regarding transmission near the Zumbro Dam route. Because these were brought to the attention of Commerce during public hearings, Commerce's review was inadequate.

(f) Conclusion and Remedy:

NoCapX2020 seeks full and public disclosure regarding conflicts of interests of Commerce contractors, and accurate presentation of information in the FEIS regarding transmission corridors, existing or non-existent, in these two contested locations. NoCapX 2020 also seeks to correct the record in the CapX 2020 Hampton-Rochester-LaCrosse routing proceeding and prevent inappropriate, improper or uninformed transmission routing by the Commission, and seeks methods to assure a similar conflict does not occur again with Commerce contractors.

With that aim, NoCapX 2020 specifically requests:

1. Disclosure and correction of errors regarding transmission and lack thereof at the Byllesby and Zumbro dam routes at issue in this proceeding and filed in eDockets.
2. Disclosure of conflicts of interest review performed by Commerce prior to contracting with Barr Engineering for the Hampton-Rochester-LaCrosse EIS and filed in eDockets; and
3. Update of conflicts policy for Commerce contractors; and
4. Commission review of the routing Order in this docket in light of the misinformation regarding transmission near the dams; and
5. Such other sanctions deemed appropriate.

Respectfully submitted,

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